REMARKS

Reconsideration of the above-identified application is respectfully requested.

Claims 1–10 were rejected as unpatentable over Swaminathan et al. in view of Uchino et al. The Swaminathan et al. patent relates to comfort noise. The Uchino et al. publication relates to "properly evaluating a phase noise transfer characteristic of a device under analysis in a short measuring time" (paragraph [0002]). As such, there is no basis for the combination; In re Rouffet, 47 USPQ2d 1453, at 1457 (Fed. Cir. 1998). Reversing the order of the prior art relied on does not cure the problem. Why cannot the decision of the Federal Circuit be followed?

What is the device under analysis in the Uchino et al. publication? The claimed invention relates to a telephone. The telephone is not under test. Is the comfort noise for testing a user? The lack of a basis for combining the citations is overwhelming yet the Examiner does not comment on the issue. Is this an examination that is "complete with respect ... to the patentability of the invention as claimed" [Rule 104]?

The Examiner alleges that "Uchino et al. disclose a method for providing a noise signal in a digital communication system." As clear from the quote from paragraph [0002], this assertion is not true. The "device under analysis" is a "digital line," which in less pretentious terms is a wire, perhaps coaxial, perhaps a twisted pair of wires. To characterize a wire as a "digital communication system" is an aggrandizement that exceeds the published application. To mischaracterize the prior art in order to support a rejection is improper and vitiates the rejection.

The reliance on the Uchino et al. publication is an assertion that putting noise into a wire to test the electrical characteristics of the wire renders obvious, not just comfort noise, but a particular kind of comfort noise. Applicants respectfully disagree.

The Examiner further asserts that "the magnitude of the white noise into each QMF filter is controlled in accordance with the magnitude of the signal in a corresponding sub-band in the one channel (Paragraph 457)." The paragraph reads as follows.

"[0457] The weighting coefficients σ_1–σ_{13} have the values proportional to square roots of magnitudes of spectra in the respective bands of the power spectrum density distribution characteristic Sy(f) divided by the boundary frequencies $fc1$–$fc12$, and are set by the characteristic information setting means **23**."

Signals σ_1–σ_{13} are defined on page 17, paragraphs [458–470] as **fixed** weights. As illustrated in applicant's FIG. 6, and recited in claims 6 and 7, the inputs to the multipliers are signals from the sub-band filters. Clearly, fixed weights do not control "in accordance with the magnitude of the signal in a corresponding sub-band in the one channel" as recited in claim 1. Fixed does not disclose or suggest variable and certainly does not disclose or suggest a particular kind of variable.

Paragraph [0457] is a single sentence. Let us simplyify it. "The weighting coefficients σ_1–σ_{13} ... are set by the characteristic information setting means 23." Again, the weights are not set "in accordance with the magnitude of the signal in a corresponding sub-band."

Applicants previous comments on the contents of the Swaminathan et al. patent and the Uchino et al. publication remain relevant.

In view of the foregoing remarks, it is respectfully submitted that claims 1–10 are in condition for allowance and a Notice to that effect is respectfully requested.

Respectfully submitted,

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